

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3909 of 1981

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MALEK AHMEDBHAI AMIRBHAI

Versus

NAGINBHAI CHUNILAL

Appearance:

MR KETAN A. DAVE for Petitioner

MR HB SHAH for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 16/12/97

ORAL JUDGEMENT

This petition arises of a claim for discharge of debt made by the petitioner under the provisions contained in the Gujarat Rural Debtors Relief Act, 1976 (hereinafter referred to as "the Act"). The claim made by the petitioner was registered as case No. 907. The petitioner claimed that he was a marginal farmer and he owned land bearing Survey No. 1212 admeasuring hectare

1.03.07. (Hereinafter referred to as "the Land"). Said land was mortgaged to the respondent for a sum of Rs. 3,000/- of which Rs. 2,001/- was paid and Rs.999/- still remained outstanding. He claimed that he also did tailoring work and earn annual income of Rs.900/- from his tailoring work. The petitioner claimed that after the land was mortgaged to the respondents, the petitioner on several occasions, borrowed further loan from the respondent and the respondent received income of mango trees standing on the land. Some part of the debt was discharged by the petitioner in course of years. He, therefore, prayed that he be discharged of his debt and to deliver possession of the land to the petitioner. The Debt Settlement Officer under his judgment and order dated 3rd September, 1979, held that the petitioner was a rural artisan and that the transfer of the land in the year 1962 was a mortgage. He, therefore, made an order in favour of the petitioner discharging the petitioner of his debt and releasing the land from mortgage. Feeling aggrieved, the respondent preferred appeal before the appellate authority which was registered as Appeal No. 47 of 1979 and was allowed on 21st December, 1979. Feeling aggrieved by the judgment and order of the appellate authority, the petitioner has preferred this petition under Article 227 of the Constitution of India.

2. The respondent has filed his affidavit and has placed on records relevant documents. On perusal of the said documents, it is evident that the Land was transferred to the respondent by a registered sale deed. The land was sold to the respondent for a sum of Rs.3,000/- and the relevant entries were made in the books of account of the respondent at the relevant time. Pursuant to the same, mutation entries were made in the revenue records which were certified on 19th April, 1963. Since then, possession of the land has been with the respondent. Though it appears that even after the sale of the Land, the petitioner borrowed certain advances from the respondent. However, on the basis of such advances, it cannot be held that the transaction in question was that of a mortgage. In my view, the appellate authority was right in holding that the transaction of the Land was that of a sale and was neither a mortgage nor a conditional sale as has been averred by the petitioner. I do not find any infirmity in the order of the appellate authority. Petition is, therefore, dismissed. Rule is discharged. Interim relief granted earlier stands vacated. There shall be no order as to costs.

Vyas